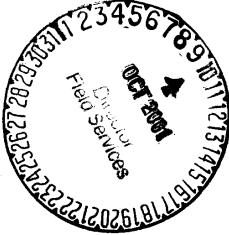


U.S. Department of Labor



Employment and Training Administration
Suite 825 East
The Curtis Center
170 South Independence Mall West
Philadelphia, Pennsylvania 19106-3315

VEC

OCT 09 2001

COMMISSIONER'S
OFFICE



www.region02.doleta.gov

Reply to the attention of:

2-OWS/FLCU/REP.clc

October 3, 2001

REGIONAL FIELD MEMORANDUM, FLCU NO. 1-02

TO: ALL STATE EMPLOYMENT SECURITY AGENCIES (SESAs)

SUBJECT: Improvements in H-2A Processing

PURPOSE: To reissue policy previously issued in 1997 regarding issues involving recruitment of U.S. workers in the H-2A program, and to update the Inquiries section.

REFERENCE: 20 C.F.R. 655, Subpart B (H-2A regulations); ETA Handbook No. 398.

RESCISSIONS: None

1. Background. Since the H-2A Regulations went into effect on June 1, 1987, questions have been raised about when and under what conditions U.S. workers are considered to be available and used as a basis for full or partial denial of H-2A certifications. Questions have also been raised in regard to the process of redeterminations in the 72-hour window in the regulations. A third issue relating to recruitment has been the adequacy and/or necessity of Positive Recruitment.

During the debate and testimony concerning proposed "guest worker" legislation to amend or replace H-2A, a number of growers and their representatives alleged that ETA is inconsistent and needlessly bureaucratic in interpreting and enforcing its regulations with regard to recruitment. At the same time, worker advocates expressed concern about the adequacy of the recruitment process for domestic workers, and especially about the use of adequate positive recruitment. This Regional Field Memorandum clarifies some of these issues with the goal of retaining realistic protections for U.S. workers while streamlining the process for growers and State Workforce Agency staff.



2. Policy Discussion

a. Every effort should continue to be made to locate able, willing and qualified U.S. workers. However, Regional Offices have been instructed not to reduce the number of requested H-2A workers unless there is reasonable certainty that the workers listed as available by a recruitment source such as a State Workforce Agency are in fact willing to take the job and are likely to arrive by the date of need. At a minimum, the recruitment source should conduct an adequate screening of applicants, and encourage, as well as assist, employers to conduct an interview. Regional Offices have been advised to use judgement in determining availability of workers, particularly in those instances in which a list of names and social security numbers is provided the day before, or the day of certification, when an employer has no opportunity to interview those workers. (It is assumed that no denial will be made merely on a list of names without social security numbers or vague statements with respect to the number of workers available.)

Section 655.106 notes that an available worker is one "who has made a firm commitment to work for the employer..." A written agreement signed by the worker to accept the job should be considered as a "firm commitment."

In making full or partial denials, the Regional Office will consider the historical record of recruitment sources both in relation to the percentage of workers on a list who continue to express interest after the employer interview and the percentage of those workers who show up as agreed by the date of need.

b. As a reminder, the 50 percent rule protects the employment rights of U.S. workers. Employers should be informed of the number of workers who might be available and reminded that they must make a job available for all who arrive at the job site. The goal should be to eliminate the need for redetermination by certifying the appropriate number of H-2A workers initially.

c. If workers identified by the Regional Office as able, willing and qualified do not report as promised, discretion will be used in reducing the number requested in the redetermination based on "last minute" replacements. Since in most situations there is another employer with a later start date, the focus should be on an effective placement of the replacement worker, and not on producing a name as a basis for rejecting a redetermination request. Because many employers prepare their processing documents in advance, providing timely notification with respect to replacement workers is essential to providing quality customer service. The intent should be to identify and refer domestic workers who will report as promised and remain to complete the job.

d. Positive recruitment should not be a "paper process." If there are credible reports of "a significant number of able and qualified U.S. workers, who, if recruited, would likely be willing to make themselves available for work at the time and place needed" then Regional Offices should not only require positive recruitment, but should include information on the specific

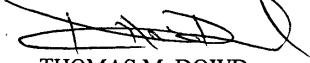
format, location and language of radio advertisements, and how direct contacts with worker and worker organizations will be made including examples of multilingual "flyers" about the job and information regarding to whom they will be sent.

e. In consideration of the increased use of America's Job Bank (AJB) and of other electronic and automated systems of job information, approved agricultural job orders should be routinely entered upon receipt into the AJB. States are encouraged to use electronic and automated systems in notifying all potential workers of agricultural job openings.

3. Action Required. Please ensure appropriate staff in your offices are informed of these policies.

4. Inquiries. Inquiries should be directed to Stephen Stefanko at (215) 861-5246.

5. Expiration Date. September 30, 2003.



THOMAS M. DOWD
Regional Administrator